



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DW 02-01

Paper No. 3

COPY MAILED

FEB 21 2001

**OFFICE OF PETITIONS
A/C PATENTS**

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
ARLINGTON COURTHOUSE PLAZA I
2200 CLARENDON BOULEVARD, SUITE 1400
ARLINGTON, VA 22201

In re Application of	:	DECISION GRANTING PETITION
Miller et al.	:	AND
Application No. 09/776,936	:	NOTICE TO FILE
Filed: 22 December, 1998	:	MISSING PARTS
Attorney Docket No. BAYER 6 P1	:	

This is a decision on the paper styled as a petition under 37 CFR 1.182, filed on 9 May, 2000, which is being treated as a petition under 37 CFR 1.53(e)(2), requesting that the above-identified application be accorded a filing date of 28 December, 1998, with 76 pages of specification, eight (8) pages of claims, and one (1) page of abstract as the original disclosure of the application.

The petition is granted.

Petitioners assert that the application papers described above were deposited in the USPTO on 22 December, 1998, with a petition to convert Application No. 08/996,344, filed on 22 December, 1997, to a provisional application, but were subsequently misplaced in the Office. The petition to convert Application No. 08/996,344 to a provisional application was granted on 11 February, 1999, and provisional Application No. 60/122,060 was assigned. In support, petitioners have supplied a copy of (a) a postcard receipt bearing the title of this invention, the name of first named inventor, the docket number listed above, and the law firm listed above. The postcard receipt, which is not itemized, bears an Office date-stamp of 22 December, 1998, and Application No. 08/996,344; (b) a copy of a transmittal letter, dated 22 December, 1998, itemizing the filing of 76 pages of specification, eight (8) claims, and one page of abstract, and (c) a copy of the 76 pages of specification, eight (8) pages of claims, and one (1) page of abstract supplied with the petition filed in the prior Application.

The original application papers filed on 22 December, 1998, have been located in the file of Application No. 60/122,060.

The petition is granted.

It is noted that petitioner's postcard receipt, by itself, does not identify the papers filed with sufficient specificity to entitle petitioners to a filing date of the date stamped thereon. Petitioners are reminded that the identifying data on a postcard receipt should be so complete as to clearly identify the item for which receipt is requested. The postcard should identify the type of paper being filed, and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.¹

The application papers supplied on 28 December, 1998, have been removed from the file of Application No. 60/122,060, placed in a new file wrapper, and assigned Application No. 09/776,936. All future correspondences regarding this application should be directed to that application number. Petitioner should note that it is inappropriate to designate this application as a continuation-in-part (CIP) because an application can only be a CIP of a nonprovisional application.²

The petition fee will be refunded.

The application papers supplied on 22 December, 1998, omitted a signed oath or declaration in compliance with 37 CFR 1.63 and the required filing fee. Petitioner must therefore submit an oath or declaration in compliance with 37 CFR 1.63, the basic filing fee, and a surcharge for their late filing within TWO MONTHS of the mailing date of this decision. Extensions of time in accordance with 37 CFR 1.136(a) are available. Applicants' response should be directed to the attention of the Office of Initial Patent Examination (OIPE).

The application is being forwarded to OIPE for processing as an application under 37 CFR 1.53(b) with a filing date of 28 December, 1998, using the application papers filed on 28 December, 1998, and to await receipt of the filing fee(s), an

¹ MPEP 503.

² See 37 CFR 1.53(b).

executed oath or declaration, and the surcharge for their late filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.

A handwritten signature in cursive script, appearing to read "Beverly Flanagan".

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy